



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bannum, Inc.

File: B-271075; B-271076; B-271117

Date: May 22, 1996

Kenneth A. Guckenberger, Esq., Rahdert & Anderson, P.A., for the protester.
Elizabeth A. Nagy, Esq., Department of Justice, for the agency.
Christine Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably excluded protester's proposals from the competitive range under three solicitations, where the proposals essentially paraphrased the statement of work requirements and did not demonstrate whether the protester independently understood those requirements.

DECISION

Bannum, Inc. protests the exclusion of its proposals from the competitive range under three requests for proposals (RFP), issued by the Department of Justice, Bureau of Prisons (BOP), for the operation of halfway houses for male and female federal offenders in Knoxville, Tennessee (RFP No. 200-295-MA or "Knoxville RFP"), Nashville, Tennessee (RFP No. 200-297-MA or "Nashville RFP"), and The Bronx, New York region (200-296-NE or "Bronx RFP").

We deny the protests.

Each of the subject RFPs requested offers on a firm, fixed-price basis for estimated requirements for a 2-year base period with three 1-year options. The contractor under each RFP was to furnish the necessary facilities, equipment, and personnel to provide for the safekeeping and program needs of federal offenders ordered to be detained at the particular halfway house. Offerors were to propose a facility to serve as the halfway house, which would satisfy the requirements stated in the particular RFP statement of work (SOW). Offerors were to substantiate their right to use the proposed facility through "deeds, leases, bills of sale, options to lease, options to buy, contingency leases or contingency deeds."

Estimated requirements varied between the RFPs; for example, requirements under the Bronx RFP were nearly double those under the Knoxville RFP. Also, the Bronx RFP required the contractor to operate a type of halfway house known as a

community corrections center, while the Nashville and Knoxville RFPs required the contractor to operate a comprehensive sanction center, which is a more restrictive and supervised environment in which BOP corrections officials take part in overseeing offenders.

Whether a comprehensive sanction center or a community corrections center was specified, each SOW required the contractor to offer certain baseline programs for its residents, such as employment counseling and placement services; academic, vocational, and job training; substance abuse and family counseling; community adjustment training; and post-release relocation services. The contractor was to develop a network of community resources and services, including referrals to other federal, state, and community agencies, in an effort to fulfill each resident's specific program needs. Each SOW charged the contractor with numerous oversight responsibilities to ensure that residents met disciplinary requirements, curfews, and various financial and programmatic responsibilities; for example, the contractor was responsible for monitoring each resident's whereabouts; monitoring each resident's employment and attendance; and performing random drug and alcohol tests and contraband searches. The contractor was required to assist with the development and enforcement of disciplinary policies and procedures, consistent with BOP's prohibited acts policy.

Each RFP stated four equally important evaluation factors: Past Performance, Technical (including reports/policy/procedures, facility, and overall programs approach), Management, and Price. Under the technical and management factors, the agency was to evaluate the offeror's approach to performing the SOW requirements. The technical factor focused on the offeror's ability to achieve SOW requirements based upon its proposed facility, documentation, and operational procedures. The management factor focused on the offeror's ability to achieve SOW requirements based upon its management capability, corporate experience, and staffing approach. The solicitations advised that proposals which merely repeated, paraphrased or affirmed the SOW requirements were not acceptable and might be rejected.

Bannum submitted proposals in response to the three solicitations. In each instance, the contracting officer eliminated Bannum's proposal from the competitive range before the Source Selection Evaluation Board was convened and before evaluation documentation was generated.

BOP reports that Bannum's proposals were excluded because they did not contain acceptable evidence of Bannan's right to use its proposed performance facilities and because they parroted the SOW requirements to such an extent that the agency could not discern Bannum's technical or management approach or understanding of the contract requirements. BOP states that the protester basically submitted the same technical proposal in all three procurements, even though the solicitations had

different estimated requirements, different performance locations, and different penal purposes as between the solicited community corrections center and the comprehensive sanction centers. BOP also cites specific informational omissions in the protester's proposals, such as Bannum's failure to mention performance problems in prior BOP contracts, Bannum's omission of required documentation on its proposed food service subcontractors, and Bannum's submission of unacceptable evidence of its right to use its proposed facilities. Bannum protests each proposal's rejection.

The evaluation of proposals and the resulting determination of whether a proposal is within the competitive range is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Shelby's Gourmet Foods, B-270585, Mar. 22, 1996, 96-1 CPD ¶ 166. Our Office will only question the agency's evaluation where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. The offeror has the burden of submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. Premier Cleaning Sys., Inc., B-255815, Apr. 6, 1994, 94-1 CPD ¶ 241.

We agree with BOP that Bannum's proposals basically repeat substantial portions of the SOW nearly verbatim and, as such, do not evidence whether the protester independently understands the requirements applicable to each solicitation. For example, where the SOW requires that "one operable washer and dryer for every sixteen residents shall be provided in-house or through a community establishment within one mile of the facility," the protester's proposal states, "Bannum will provide one operable washer and one operable dryer on the premises for every sixteen residents or through a community establishment within one mile of the facility." Despite the RFP's admonition of the possible consequences of such mimicry, the protester's proposals rely so heavily upon repetition and provide so little specificity that it is not apparent, for example, whether Bannum has ever seen its proposed facilities or investigated any services or resources within the communities to be served. Such repetition of the SOW requirements allowed for little or no insight as to Bannum's approach to performing the contract work, such as the methods Bannum will use to monitor and discipline residents; the content of any training or educational courses it might offer; and the penal and rehabilitative goals that will instruct its approach to the contract work. In sum, Bannum's proposals simply do not present an independent technical and management approach for the agency to evaluate and were properly rejected as technically unacceptable.

Bannum argues that there is no contemporaneous documentation showing that BOP evaluated its proposals in the manner now claimed, noting that BOP cited only one deficiency in rejecting the three proposals, namely, Bannum's alleged failure to

substantiate its right to use the proposed facilities. Bannum argues that the contracting officer could not have looked at anything other than its right-to-use documentation, given the haste with which its proposals were rejected—e.g., two proposals were rejected within a day of their submission. The protester claims that BOP manufactured a new reason for rejecting its proposals because the first stated reason was improper.

While there is no contemporaneous documentation regarding BOP's evaluation of its proposals, our review must consider the entire record, including statements and arguments made in response to the protest. See ROH, Inc., B-261132, Aug. 18, 1995, 95-2 CPD ¶ 169. The fact that the agency's explanation was not contained in the contemporaneous record does not provide a basis to disregard it in our review. See Sociometrics, Inc., B-261367.2, B-261367.3, Nov. 1, 1995, 95-2 CPD ¶ 201.

Furthermore, even if the reasons initially advanced by BOP to reject Bannum's proposals were improper, an agency may justify its actions on new grounds so long as those grounds would have provided proper support at the time the action was taken. See 71-72 Corp., B-213424, Apr. 10, 1984 84-1 CPD ¶ 407; NonPublic Educ. Serv., Inc. B-207751, Mar. 8, 1983, 83-1 CPD ¶ 232. Because the record reasonably supports that Bannum's proposals were seriously deficient in addressing the SOW requirements, we would not sustain its protest, even accepting Bannum's assertion that the initial reason for rejecting its proposals was insufficient or otherwise improper.

Admitting that it "repeated certain language or paraphrased other language in the SOW," Bannum nevertheless argues that BOP has accepted similar Bannum proposals in other procurements. However, each procurement is a separate transaction and the action taken on one procurement does not govern the conduct of all similar procurements; the simple assertion of inconsistency, without more, does not satisfy the protester's burden of affirmatively proving its case. EOD Technology, Inc. B-266026, Dec. 18, 1995, 95-2 CPD ¶ 273.

The protester finally contends that there is a history of bias against Bannum at BOP and that BOP officials have de facto debarred Bannum from competing for government contracts. Bannum's arguments have no merit in the present case, inasmuch as the record establishes that the agency properly eliminated Bannum's

proposals from consideration under these solicitations pursuant to the evaluation criteria rather than because of a de facto debarment.¹ See Bannum, Inc., B-270640, Mar. 27, 1996, 96-1 CPD ¶ 167.

The protests are denied.

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¹We note that Bannum has filed suit in the United States District Court for the Western District of Tennessee, seeking, among other things, a permanent injunction against BOP from conducting a debarment, de facto or otherwise, of Bannum. We also note that in Bannum, Inc., B-249758, Nov. 24, 1992, 92-2 CPD ¶ 373, the protester made basically the same allegation and cited the same evidence to show a de facto debarment; we did not find that the evidence supported Bannum's allegation of de facto debarment in that case.